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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION

DOCKET NO. 1:11CR10-MR-DLH

UNITED STATES OF AMERICA,
Plaintiff,

v.

JAMES W. BAILEY, JR.,
Defendant.

**CONSENT ORDER FOR
THIRD PARTY PETITION**

THIS MATTER is before the Court by consent of the United States of America, by and through Anne M. Tompkins, United States Attorney for the Western District of North Carolina and Petitioner Mercedes Benz Financial Services USA LLC (formerly known as DCFS USA LLC)¹, through counsel, pursuant to Fed. R. Crim. P. 32.2(c). The Government and Petitioner have consented to this Consent Order for Third Party Petition as a final adjudication and settlement of all matters with regard to the following property (the "Subject Property") covered by the Consent Order and Judgment of Forfeiture (Dkt. 16) filed herein:

One 2008 Mercedes Benz, VIN 4JGBB22E68A312333.

¹ The Government and Petitioner have, for some time, been engaged in discussions about the best course whereby to liquidate the Subject Property. Petitioner has not filed a petition but, upon information and belief, direct notice to Petitioner was defective. The Government has advised Petitioner that, with permission of the Court, in the interest of streamlining the third party claims process, and in light of the cooperative posture of the parties, the Government does not object to treating the stipulations of the parties herein as an appropriate petition under Fed. R. Crim. P. 32.2.

The Government and Petitioner advise the Court that they have engaged in discussions about the Subject Property for the purpose of determining whether Petitioner satisfies 21 U.S.C. § 853(n)(6). Pursuant to such discussions, the parties have **STIPULATED AND AGREED** and the **COURT FINDS AS FOLLOWS**:

1. Pursuant to a lien reflected on the North Carolina Certificate of Title for the Subject Property, Petitioner has a secured interest in the Subject Property. Pursuant to this Consent Order for Third Party Petition, the Subject Property should be dismissed from the Consent Order and Judgment of Forfeiture on the basis that Petitioner satisfies one or more prongs of 21 U.S.C. § 853(n)(6). However, Petitioner shall pay certain funds to the Government as stipulated herein and those funds shall be forfeited as a substitute res for the Subject Property.

2. The parties stipulate and agree to the following facts about transactions involving the Subject Property. Petitioner has provided evidence and documentation to the Government that Petitioner has satisfied Section 853(n)(6), is a creditor that has appropriately secured debt on the Subject Property, and was due a payoff amount of \$33,543.60 as of July 29, 2011. Petitioner has the ability to auction or otherwise sell the Subject Property as soon as reasonably possible following issuance of this Consent Order for Third Party Petition dismissing the Subject Property from the Consent Order and Judgment of Forfeiture. The Government does not object to dismissal of the

Subject Property, provided, however, that upon sale of the Subject Property (1) before applying any sale proceeds to the outstanding loan balance, Petitioner will pay \$1,264.15 in storage costs to the Government for administrative and/or judicial forfeiture as a substitute res for the Subject Property and (2) in the event that the sale generates net proceeds above and beyond the \$1,264.15 in storage costs and the amount required to pay any secured outstanding loan balance, the net proceeds above the storage costs and secured outstanding loan balance shall also be turned over to the Government for administrative and/or judicial forfeiture as a substitute res for the Subject Property.

3. The Government agrees to turn over the Subject Property to Petitioner. Petitioner agrees (1) to liquidate the Subject Property at fair market value, (2) to, upon liquidation, turn over \$1,264.15 in funds to the Government for appropriate proceedings pursuant to law and before applying sale proceeds to any secured outstanding loan balance, and (3) that if Petitioner obtains funds above and beyond the \$1,264.15 and the secured outstanding loan balance, Petitioner will turn over such funds to the Government for appropriate proceedings pursuant to law.

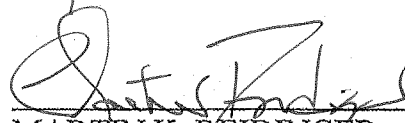
4. The parties waive any rights to further litigate their interests in this forfeiture action to the Subject Property and agree that this Consent Order for Third Party Petition shall be in full settlement and satisfaction of all claims by the

Government in this action to the Subject Property, all claims by Petitioner in this action to the Subject Property, and all claims resulting from the incidents or circumstances giving rise to the forfeiture of the Subject Property. Unless specifically directed by an order of the Court, Petitioner shall be excused and relieved from further participation in this action.

IT IS THEREFORE ORDERED THAT:

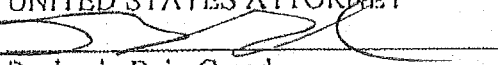
1. Based upon the stipulations of the Government and Petitioner that Petitioner satisfies one or more prongs of 21 U.S.C. § 853(n)(6), the Subject Property is hereby removed from the Consent Order and Judgment of Forfeiture and Petitioner is hereby ordered to, upon liquidation of the Subject Property, turn over to the Government \$1,264.15, plus any additional net proceeds obtained in excess of the secured outstanding loan balance as set forth in the stipulations of the parties herein.
2. Each party shall bear its own costs, including attorneys fees.

Signed this 6 day of February, 2012.

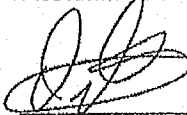

MARTIN K. REIDINGER
UNITED STATES DISTRICT JUDGE

ON MOTION OF AND
BY CONSENT OF THE PARTIES:


ANNE M. TOMPKINS
UNITED STATES ATTORNEY


Benjamin Bain-Creed
Assistant United States Attorney

Dated: 2/3/12


Sanford E. Bickman
Assistant General Counsel
Office of Mercedes Benz Financial USA LLC
Services

Dated: 2/3/12


REBECCA A. LEIGH, Esq.
Attorney for Petitioner

Dated: JANUARY 26, 2012